STATE OF MICHIGAN

COURT OF APPEALS

In re TIPTON/LAWRENCE, Minors.

UNPUBLISHED
September 14, 2017

Nos. 336621; 336622
Wayne Circuit Court
Family Division
LC No. 14-516152-NA

Before: O'BRIEN, P.J., and JANSEN and MURRAY, JJ.

PER CURIAM.

In Docket No. 336621, respondent mother appeals as of right an order terminating her parental rights to minor children JT, SL, and CL pursuant to MCL 712A.19b(3)(c)(*i*) (conditions leading to adjudication continue to exist) and (g) (failure to provide proper care and custody). In Docket No. 336622, respondent father appeals as of right an order terminating his parental rights to minor child SL under MCL 712A.19b(3)(c)(*i*), (g), and (h) (child would be deprived of a normal home for more than two years because of parent's incarceration). We affirm.

A trial court may terminate a respondent's parental rights if it finds that (1) a statutory ground under MCL 712A.19b(3) has been established by clear and convincing evidence and (2) termination is in the child's best interest. MCR 3.977(F); *In re Fried*, 266 Mich App 535, 540-541; 702 NW2d 192 (2005). Neither respondent mother nor respondent father takes issue with the trial court's finding that statutory grounds justifying termination were established by clear and convincing evidence. However, both respondent mother and respondent father argue that the trial court clearly erred in determining that termination of their parental rights was in the best interests of their respective children. We disagree.

This Court reviews a trial court's decision regarding a child's best interests for clear error. *In re Laster*, 303 Mich App 485, 496; 845 NW2d 540 (2013). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction a mistake has been made." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). Whether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). In making a determination of whether termination is in the best interests of a child, the trial court may consider all available evidence on a wide variety of factors. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). These factors include the existence of a bond between the child and the parent, the parent's ability to parent, the child's need for permanency and stability, the advantages of a foster home over the parent's home, the parent's compliance with his or her

service plan, the parent's visitation history with the child, the child's well-being, and the possibility of adoption. *Id*. at 713-714.

With respect to respondent mother, we are not definitely and firmly convinced that the trial court made a mistake when it found that termination of her parental rights was in the children's best interests. Although respondent mother managed periods of full compliance with her treatment plan, she ultimately failed to rectify the conditions that led to the children's placement in DHHS custody. Respondent mother was referred for counseling designed to help her cope with anger and substance abuse issues, but she failed to benefit from those services and was terminated eight times for failure to participate. Respondent mother clearly understood that cessation of her marijuana use was necessary for reunification, and although she stopped smoking marijuana during a pregnancy, she resumed the behavior once the child was born. Respondent mother claimed that the marijuana helped her deal with anger, but she never obtained a prescription. Respondent mother refused to take medication prescribed for her because she did not like how it made her feel. Further, although respondent mother claimed a few short periods of temporary employment, she provided no evidence of income.

After nearly three years of proceedings, respondent mother had demonstrated that she was not able to provide permanency and stability for her children. Respondent mother never had a suitable home even though she had been provided with numerous referrals. The DHHS was unable to locate a suitable relative placement. During the pendency of the termination proceedings, respondent mother was either homeless or living with various relatives, including a cousin whose home was never made available for assessment and an uncle who was on the central registry for child abuse and had a criminal record for manslaughter. Although respondent mother never suggested any other placement, the DHHS attempted to place JT with two different aunts. JT was eventually removed from each home at the caregiver's request. At the time of the termination hearing, JT, SL, and CL were living in two separate foster homes. JT, then nine years old, had been in foster care since his removal nearly three years prior. SL, born three months after the trial court took custody of JT, was placed in a foster home when she was a year old. CL, six months old at the time of the termination hearing, had been removed from his mother's care at birth and had spent his entire life in foster care with his sister, SL. Although testimony established that respondent mother was affectionate and appropriate with the children during visitations, she stopped visiting her children regularly after July 2016, six months before the termination hearing. The record shows that respondent mother's bond with the children was weakened by the sporadic nature of her visits, and that the children had become bonded to their respective foster parents. Any bond shared between respondent mother and her children did not outweigh the children's need for safety, stability, and permanency. See *In re Jones*, 316 Mich App 110, 120; 894 NW2d 54 (2016). The children's foster parents had expressed willingness to adopt.

The trial court properly considered the available evidence, including the need of the children for permanency and stability. We cannot conclude that the trial court clearly erred in finding that termination of respondent mother's parental rights was in the best interests of the children.

Similarly, with respect to respondent father, we cannot find that the trial court clearly erred in its determination that termination of respondent father's parental rights was in SL's best

interests. Although respondent father was bonded to SL and cared for her after her birth, respondent father was incarcerated on an assault with intent to murder conviction just after SL's first birthday. Respondent father provided a release date of 2035, and during the pendency of these termination proceedings, his security level did not allow for visitation with SL. Respondent father was able to send letters to SL, but completely unable to provide any care for his child. Respondent father was also unable to participate in any services while incarcerated.

We note that SL's paternal grandmother, Sabrina Lawrence, repeatedly expressed an interest in caring for SL as guardian. Lawrence, who already had guardianship of respondent father's three oldest children, moved from her two-bedroom apartment to a three-bedroom apartment in preparation. Lawrence expressed to foster care workers an interest in guardianship, but told them that she did not want to adopt SL. At the termination hearing, several foster care workers expressed the opinion that a guardianship arrangement would not provide the stability and permanency SL required. It was not until the termination hearing that Lawrence informed the trial court that she would be willing to adopt if she had to, in order to keep SL with her and SL's three older siblings.

The availability of relative placements must always be considered when assessing whether termination of parental rights is in a child's best interests, and generally weighs against termination. *In re Olive/Metts Minors*, 297 Mich App 35, 43; 823 NW2d 144 (2012). However, the availability of relative placements is not dispositive, and the trial court must balance all of the factors affecting the best interests of the child. See *id*. The trial court properly weighed Lawrence's late request for consideration as an adoptive parent against the fact that SL had already spent the majority of her young life in a foster care home. At the time of the termination hearing, Lawrence had not yet completed the necessary steps for consideration as an adoptive parent. The trial court's conclusion that SL should not have to wait any longer for necessary permanency was not improper. Nor was the trial court's reliance on the opinions of foster care workers in concluding that a guardianship would not be appropriate for SL, especially in light of the fact that respondent father would not be released from prison or capable of resuming care of his child until SL had reached adulthood.

Termination of respondent father's parental rights immediately resulted in SL remaining with her half-brother, CL, in the care of foster parents who were bonded to both children and had expressed an interest in adoption. Additionally, before the matter concluded, the trial court informed the parties that Lawrence should be considered as a possible adoptive source and instructed Lawrence to contact the department and follow through. The record shows that both the foster parents and the paternal grandmother filed petitions to adopt the children. Regardless of the outcome, termination of respondent father's parental rights will provide SL with the permanency and stability of an adoption and placement in a loving home. We cannot say that we are definitely and firmly convinced that the trial court made a mistake when it found that termination was in SL's best interests.

Respondent father also contends that petitioner did not make reasonable efforts toward reunification because the DHHS declined respondent father's request to place SL with Lawrence pursuant to a guardianship arrangement. We disagree.

To protect a parent's fundamental liberty interest in the care and custody of his children, Michigan law requires the DHHS to make reasonable efforts to reunify a child with his or her family before the court may order termination of parental rights. MCL 712A.19a(2); *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). These reasonable efforts must include identifying relatives who might be able to provide care for the child. MCR 3.965(D); *In re Rood*, 483 Mich 73, 107-109; 763 NW2d 587 (2009).

On this record, we are not convinced that the DHHS failed to make reasonable efforts toward reunification and towards keeping SL with her family. When respondent father asked that the child be placed with his father, the DHHS investigated and found the home of SL's paternal grandfather unsuitable because SL's paternal grandfather was living with a woman who was on the central registry for child abuse. When respondent father requested SL's placement with Lawrence, the DHHS investigated and informed Lawrence that she would need a bigger home before she could care for SL. Although Lawrence moved into a larger home, neither she nor respondent father further pursued guardianship, and Lawrence did not express a willingness to adopt SL until the termination hearing. The DHHS made reasonable efforts when it investigated possible placements, and although SL was not placed with Lawrence prior to the termination hearing, she is now being considered as an adoptive parent post-termination. Respondent father does not suggest that there was anything more the DHHS could have done. We therefore find no error in the trial court's conclusion that reasonable efforts toward reunification had been made.

Affirmed.

/s/ Colleen A. O'Brien
/s/ Kathleen Jansen
/s/ Christopher M. Murray